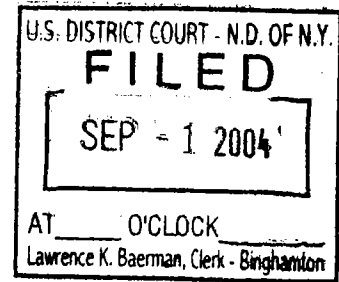


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August 30, 2004

VIA HAND DELIVERY
& ELECTRONIC FILING

Hon. Thomas J. McAvoy
United States District Court
Federal Building
100 South Clinton Street
P.O. Box 7376
Syracuse, New York 13261-7376

Re: *Desormeau, et al. v. American Rock Salt Company, LLC, et al.*
Case No: 7:03-CV-196 (TJM/GJD)

Dear Judge McAvoy:

Pursuant to my conversation with Chambers on August 25, 2004, please accept this letter as a Motion, pursuant to Federal Rules of Civil Procedure, Rule 41(a)(2), to dismiss the instant lawsuit without prejudice.

Plaintiffs filed an action on February 13, 2003 in the United States District Court, Northern District of New York, identified as CV Case No. 7:03-CV-196, alleging, *inter alia*, three federal and ten state law causes of action as set forth at length in the filed Complaint (hereinafter the "Federal action"). On April 14, 2003, Plaintiffs, by way of Order to Show Cause, filed a Motion for Preliminary Injunction seeking to enjoin Defendants' use of the property for the bulk storage of road salt. The Defendants have appeared by counsel, Joseph Picciotti, Esq., in the Federal action and deny the material allegations contained in the Complaint, although issue has not yet been joined. The Court issued a written Decision denying Plaintiff's request for a preliminary injunction on June 13, 2003.

Plaintiffs now elect to file the instant Motion to discontinue the Federal causes of action, as permitted by the Federal Rules of Civil Procedure, Rule 41(a)(2). Plaintiffs intend to pursue their state law causes of action in a new action to be filed in New York State Jefferson County Supreme Court. While Defendants' counsel has been contacted, Defendants have declined to stipulate to sign a Stipulation discontinuing the Federal

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action and allow Plaintiffs to file a new action in New York State Supreme Court, thus necessitating the instant Motion.

It is respectfully submitted that Defendants will not be prejudiced in any manner should the Court grant Plaintiffs' Motion. Because the Defendants have not answered the Complaint, this suit has only minimally progressed beyond the initial motions. Additionally, due to the lack of progress in the instant action, there will be very little duplicative expense on the part of the Defendants when Plaintiffs file a new action in New York State Supreme Court.

Therefore, Plaintiffs respectfully request that this Court issue an Order pursuant to Federal Rules of Civil Procedure, Rule 41(a)(2) and 28 U.S.C. § 1367 dismissing Plaintiffs' Ninth, Tenth and Thirteenth Causes of Action as alleged in the Complaint, and stating that the United States District Court of the Northern District of New York will not exercise Supplemental Jurisdiction over Plaintiffs' First through Eighth, Eleventh and Twelfth Causes of Action as set forth in the Complaint and hereby consent to dismissal of the Federal action, without prejudice.

If the foregoing is amenable, we ask that the Court "So Order" this letter and cause same to be filed with the Clerk.

Respectfully submitted,

HANCOCK & ESTABROOK, LLP

A handwritten signature in dark ink, appearing to read "Ed J. Smith III".

Edward J. Smith, III

EJS/cgt

cc: Joseph C. Picciotti, Esq. *(via facsimile and electronic filing)*

SO ORDERED that this action is dismissed pursuant to FRCP 41(a)(1)(i).

Dated: September 1, 2004

A handwritten signature in dark ink, appearing to read "Thomas J. McAvoy".
Thomas J. McAvoy
Senior, U.S. District Judge